

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on)
its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon)
New England Inc., d/b/a Verizon Massachusetts' provision of)
Special Access Services.)

D.T.E. 01-34

**WORLDCOM, INC.'S MOTION FOR PROTECTIVE TREATMENT OF
CONFIDENTIAL INFORMATION**

WorldCom, Inc. hereby requests that the Department protect from public disclosure certain confidential data submitted in this proceeding. In particular, WorldCom seeks protection from public disclosure, pursuant to G.L.c.25, §5D, of confidential, competitively sensitive and proprietary data submitted in response to Information Request ("IR") DTE-WCOM 1-4.

I. The Legal Standard

Pursuant to G.L.c. 25, §5D, the Department may protect from public disclosure any "trade secrets, confidential, competitively sensitive or other proprietary information" provided in this proceeding. Massachusetts courts have considered the following in determining whether data or information qualifies as a trade secret:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and its competitors;

- (5) the amount of effort or money expended by the employer in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972) (citing Restatement of Torts, §757, cmt. b).

II. Argument

IR DTE-WCOM 1-4 reads as follows:

Assuming that it is possible to order a dedicated circuit from a CAP, does it take longer to provision a dedicated circuit from a CAP or from Verizon? If the answer depends on the type of circuit and/or whether facilities exist, be sure to specify this in your answer. In addition, please provide any supporting documentation to support your answer.

In an attempt to be as fully responsive to the Department's request as possible, WorldCom included as an attachment to its response a chart comparing Verizon's and an unnamed CLEC's performance in provisioning DS1 special access circuits for WorldCom, both for the most recent twelve-month period, and for the first quarter of 2002. The chart specifically identifies the number of circuits provided to WorldCom by each carrier, as well as the average installation intervals of each carrier during the relevant reporting periods.

This data qualifies for confidential treatment as a "trade secret" or "confidential, competitively sensitive or other proprietary information" under controlling Massachusetts law. The specific number of circuits WorldCom orders and the provisioning interval WorldCom receives, whether from Verizon or from any other carrier, is not information known outside of WorldCom and cannot be reasonably duplicated or readily obtained from outside WorldCom. Even within WorldCom, access

to this information is limited, and those employees to whom this information is available are bound by written agreements not to disclose confidential and proprietary information learned in the course of their employment with WorldCom. The information was developed by WorldCom, at WorldCom's expense, for its own internal purposes.

Unlike the Verizon performance data submitted in this proceeding, which is aggregated data based on its overall performance to all carriers, WorldCom's response to IR DTE-WCOM 1-4 contains data specific to WorldCom. This information, in the hands of competitors, could provide them with unfair advantages in the marketplace. A carrier that knows the provisioning intervals WorldCom gets from Verizon or another carrier could use that information in influencing the perceptions of would-be customers, including customers whose business is also being sought by WorldCom. For instance, WorldCom's competitors could use the information to convince would-be customers that they receive better provisioning performance/shorter intervals than does WorldCom. Not only could this adversely impact WorldCom's ability to sign up new customers, it could also help convince existing WorldCom customers to take their business elsewhere.

In addition, other carriers that know precisely the number of circuits WorldCom purchases from Verizon gain otherwise unavailable insight into the extent to which WorldCom has penetrated the market to date; those carriers could alter their marketing strategies in response to such information, thereby obtaining an unfair competitive advantage in the marketplace. The data could also be used by competitors to develop insights regarding the extent to which WorldCom's own facilities are available to serve customers. Moreover, to the extent end-user customers perceive service quality as being impacted by the degree to which competitors are dependent on the incumbent's

facilities, competing carriers would be able to use the data in IR DTE-WCOM 1-4 to influence those perceptions to WorldCom's detriment. As such, WorldCom is likely to suffer adverse competitive consequences if this confidential information is put into the public record and made available to WorldCom's competitors.

The Department has previously recognized that carrier-specific data of the type described above should be accorded confidential treatment and should not be placed in the public record or shared with competing carriers. In the *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83 and 96-84, the Department determined that Bell Atlantic-Massachusetts' monthly carrier specific performance reports, which contained information about orders of carriers for interconnection trunks, unbundled network elements and resold services, were competitively sensitive. *See Hearing Officer Ruling on Bell Atlantic Motion for Protective Treatment of Performance Standards Reports*, issued October 21, 1999. *See also Hearing Officer's Ruling on the Motion of CMRS Providers for Protective Treatment and Requests for Non-Disclosure Agreement*, D.P.U. 95-59B, at 7-8 (1997) (recognizing that sound public policy warrants the protection of proprietary information in a competitive market place). Moreover, the carrier-specific data in WorldCom's response to IR DTE-WCOM 1-4 is similar in kind to the carrier-specific performance data that Verizon reports pursuant to the Carrier-to-Carrier Guidelines and Performance Assurance Plan. The carrier-specific data generated pursuant to the C2C Guidelines and PAP is reported by Verizon to the Department and the carrier only; it is not made public or otherwise made available to or reported to other competing carriers. As with the carrier-specific data in C2C and PAP reports, the data in question here warrants the same confidential treatment.

III. Conclusion

For the reasons identified above, WorldCom requests that the Department grant its motion and afford protective treatment to the data provided in response to IR DTE-WCOM 1-4.

Respectfully submitted,

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Dated: New York, New York
May 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon each person designated on the service list in this proceeding by email and either U.S. mail or overnight courier.

Dated: New York, New York
May 22, 2002
